

Apr. 22, 2008 7:27AM

No. 3388 P. 2

IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA

CARLA COBLE,  
STEPHANIE LAING,  
JOSEPH NOLAN,  
ERIC WOOMER,  
POPPY CHRISMAN,

Individually and as  
Class Representatives,

vs.

Civil Action No. 08-C-359  
JURY TRIAL REQUESTED

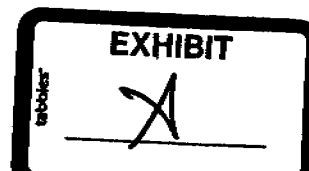
RELIANT EQUITY INVESTORS, LLC,  
a foreign limited liability company,  
TATUM, LLC, a foreign limited liability  
company, and the following as individuals:  
ROBERT PULCIANI, PHILIP WAX,  
CHRISTOPHER STEVENS, CARR PRESTON,  
QIAN ELMORE, THOMAS DARDEN, JR.,  
LARRY MORGAN, CATHY JO VAN PELT,  
KIMBERLY MYERS, ED COLEMAN,  
MICHAEL LUTZ, RICHARD HEBERT, and  
LARRY MUZZY,

BERKELEY COUNTY  
CIRCUIT CLERK  
2008 MAR 28 PM 4:35  
VIRGINIA M. SIME, CLERK

Defendants.

THIRD AMENDED COMPLAINT

1. The plaintiffs and class members are all former employees of AB&C Group, Inc., (AB&C) located in Ranson and Martinsburg, West Virginia, and doing business in, among other places, Berkeley County, West Virginia.
2. AB&C ceased operations effective March 14, 2008, which was the last day of employment for many if not all members of the Class.
3. On or before March 14, 2008 AB&C employees had not been paid for all regular, straight time worked.
4. The plaintiffs and members of the class were not paid all regular wages due within seventy-two hours of their discharge from employment as required by the Wage Payment & Collection Act, W. Va. Code § 21-5-1 *et seq.* (WPCA).
5. The plaintiffs and members of the class were not paid all then accrued fringe benefits capable of calculation and payable directly to employees within seventy-



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two hours of their discharge from employment as required by the Wage Payment & Collection Act, W. Va. Code § 21-5-1 *et seq.* (WPCA).

6. The defendants, individually or collectively, withheld wages from class members' pay for, among other things, insurance, child support, 401k contributions, and failed to timely and fully remit such funds to the authorized recipients.
7. At the Ranson facility, the defendants failed to pay employees for regular, straight hourly wages for time spent in compensable work preliminary to accepting phone calls for time spent in logging into various software applications necessary to perform their job duties.
8. The defendants were jointly, and/or severally statutory employers of the plaintiffs and members of the class.
9. AB&C is wholly owned by BlueSky Brands, Inc., (BlueSky) a Delaware corporation with its principal place of business in Rhode Island, and which was established by, and is directed and managed by, Reliant Equity Investors, LLC (Reliant) (an Illinois limited liability company). BlueSky was established by Reliant to seek out and acquire multi-channel, direct to consumer marketing companies, and did purchase AB&C by, on behalf of, and for the benefit of, the principals and managers of Reliant.
10. Reliant is actively involved in the operations, management support, acquisitions, financings, and other strategic initiatives of BlueSky and its subsidiaries and holdings, including AB&C. Reliant closed the AB&C operations in West Virginia as well as other BlueSky related operations in Rhode Island. As the statutory employer of the AB&C employees in West Virginia, Reliant is liable for the failure to pay wages under the West Virginia Wage Payment and Collection Act.
11. Defendant Tatum, LLC is a limited liability company with its principal place of business in Atlanta, Georgia but which maintains offices in 37 states. Defendant Tatum is an "executive services firm" which provided executive, operational, financial and technological services to Reliant and BlueSky and AB&C, and which identified AB&C Group as the "acquisition candidate" for purchase by Reliant and BlueSky and further arranged the acquisition financing for the purchase of AB&C Group.
12. Tatum entered into a long term partnership with Reliant, BlueSky and AB&C providing as a part of that partnership full time support as an integral member of the senior management team for AB&C and BlueSky including day to day operational management duties. As a statutory employer having exercised operational, managerial and financial control over the business enterprise here in Jefferson and Berkeley Counties, West Virginia, Tatum is liable for the failure to pay wages under the West Virginia Wage Payment and Collection Act.

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13. Defendant Carr Preston is the Vice President and a Director of BlueSky, and is the co-founder and Managing Director of Reliant. In these dual capacities, defendant Preston participated in the resolution, and did decide and/or ratify, to close AB&C without warning and, further, did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
14. Defendant Thomas Darden, Jr., is a Director of BlueSky, and is the co-founder and Managing Director of Reliant. In these dual capacities, defendant Thomas Darden, Jr., participated in the resolution, and did decide and/or ratify the decision, to close AB&C without warning and, further, did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
15. Defendant Qian Elmore is a Director of BlueSky, and is a principal of Reliant. In these dual capacities, defendant Qian Elmore participated in the resolution, and did decide and/or ratify the decision, to close AB&C without warning and, further, did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
16. Defendant Robert Pulciani is the Chief Executive Officer of BlueSky who participated in the resolution, and did decide and/or ratify the decision, to close AB&C without warning and, further, did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
17. Defendant Philip Wax is the Chief Financial Officer, Secretary and Treasurer of BlueSky, and is the Chief Financial Officer and Treasurer of AB&C, and a partner of Tatum who participated in the operational, financial and managerial control of AB&C and did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
18. Defendant Larry Morgan is the President of AB&C who participated in the resolution, and did decide and/or ratify the decision, to close AB&C without warning and, further, did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
19. Defendant Cathy Jo Van Pelt is the Director of Client Services of AB&C who participated in the resolution, and did decide and/or ratify the decision, to close AB&C without warning and, further, did knowingly permit by virtue of her positions of authority and control violations of the West Virginia Wage Payment and Collection Act.

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20. Defendant Kimberly Myers is the Director of Human Resources of AB&C who participated in the resolution, and did decide and/or ratify the decision, to close AB&C without warning and, further, did knowingly permit by virtue of her positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
21. Defendant Christopher Stevens is the Controller of AB&C who participated in the resolution, and did decide and/or ratify the decision, to close AB&C without warning and, further, did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
22. Defendant Ed Coleman was the president of AB&C who participated in the resolution, and did decide and/or ratify the decision, to close AB&C without warning and, further, did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
23. Defendant Richard Hebert was the Chief Executive Officer and President and a Director of Bluesky, and Chairman of the Board of Directors of AB&C and did exercise control over the operations of the AB&C facilities in here in Berkeley and Jefferson Counties, West Virginia, and did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
24. Defendant Michael Lutz was the Executive Vice-President of Operations of AB&C and/or the Chief Executive Officer of AB&C and did exercise control over the operations of the AB&C facilities in here in Jefferson and Berkeley Counties, West Virginia and did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
25. Defendant Larry Muzzy was the Vice President of AB&C Call Center Operations and oversaw a group of three call centers in training, attendance, staffing, monitoring, supervision and management here in Jefferson and Berkeley Counties, West Virginia and did knowingly permit by virtue of his positions of authority and control violations of the West Virginia Wage Payment and Collection Act.
26. Common questions of law or fact exist between all of the claims alleged in this Complaint.
27. The number of former employees who were not paid all wages due for hours worked within seventy-two hours of their discharge from employment and who were not paid liquidated damages and interest as required by the WPCA exceeds 375 people. Therefore, the class is so numerous that joinder of all members is impracticable.


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28. The claims of the class representatives are typical of the claims of all other former employees who had accrued but unpaid straight time wages and personal leave time hours and were not paid liquidated damages or interest.
29. The class representatives and the undersigned counsel will adequately represent the interests of the class.
30. The total value of the claims of the Class, inclusive of attorney's fees and costs is less than \$5,000,000.

WHEREFORE, the individual plaintiffs request that this matter be certified as a class action; that the Class be paid their wages, liquidated damages, interest, and attorney's fees and costs as contemplated by the WPCA; and, that the defendants be required to provide an accounting to ensure that all wages have in fact been paid.

Dated this the 28<sup>th</sup> day of March, 2008.

  
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Counsel for the Plaintiffs and Plaintiff Class

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**CIVIL CASE INFORMATION STATEMENT  
CIVIL CASES**

**IN THE CIRCUIT COURT OF BERKELEY COUNTY, WEST VIRGINIA**

**I CASE STYLE:**

Plaintiff(s)

**Carla Coble,  
Joseph Nolan,  
Eric Woomeer,  
Stephanie Laing, and  
Poppy Chrisman**

vs.

Defendant(s)

Days to Answer

Type of Service

**Reliant Equity Investors, LLC  
401 North Michigan Ave  
Suite 550  
Chicago, IL 60611**

30

Secretary of State

**Tatum, LLC  
303 PeachTree Street, NE  
Suite 4400  
Atlanta, GA 30308**

30

Secretary of State

**Robert Pulciani  
89 Harvey Road  
Westerly RI, 02891**

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Secretary of State

**Philip Wax  
89 Harvey Road  
Westerly RI, 02891**

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Secretary of State

**Christopher Stevens  
1 Executive Way  
Ranson, WV 25438**

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Secretary of State

**Carr Preston  
401 North Michigan Ave  
Suite 550  
Chicago, IL 60611**

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Secretary of State

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<b>Qian Elmore</b> 401 North Michigan Ave Suite 550 Chicago, IL 02891	<u>30</u>	<u>Secretary of State</u>
<b>Thomas Darden, Jr.</b> 89 Tom Harvey Road Westerly, RI 02891	<u>30</u>	<u>Secretary of State</u>
<b>Larry Morgan</b> 8400 Westpark Dr. Suite 100 McLean, VA 22102	<u>30</u>	<u>Secretary of State</u>
<b>Cathy Jo Van Pelt</b> 1 Executive Way Ranson, WV 25438	<u>30</u>	<u>Secretary of State</u>
<b>Kimberly Myers</b> 8400 Westpark Dr. Suite 100 McLean VA 22102	<u>30</u>	<u>Secretary of State</u>
<b>Ed Coleman</b> 1 Executive Way Ranson, WV 25438	<u>30</u>	<u>Secretary of State</u>
<b>Michael Lutz</b> 8400 Westpark Dr. Suite 100 McLean, VA 22102	<u>30</u>	<u>Secretary of State</u>
<b>Richard Hebert</b> 89 Harvey Road Westerly RI, 02891	<u>30</u>	<u>Secretary of State</u>
<b>Larry Muzzy</b> 8400 Westpark Dr. Suite 100 McLean, VA 22102	<u>30</u>	<u>Secretary of State</u>